Nos. 77-497 and 77-605

In the Supreme Court of the United States

OCTOBER TERM, 1977

NEW ORLEANS PUBLIC SERVICE, INC., PETITIONER

v.

UNITED STATES OF AMERICA

MISSISSIPPI POWER & LIGHT COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals in No. 77-497 (Pet. App. 63a-108a) is reported at 553 F. 2d 459. The opinion of the district court in that case (Pet. App. 1a-62a) is reported at 8 F.E.P. Cases 1089.

The opinion of the court of appeals in No. 77-605 (Pet. App. A1-A12) is reported at 553 F. 2d 480. The opinion of the district court in that case (Pet. App. A60-A77) is reported at 10 F.E.P. Cases 1084.

JURISDICTION

The judgments of the court of appeals were entered on June 6, 1977, and petitions for rehearing were denied on August 17, 1977. The petition for a writ of certiorari in No. 77-497 was filed on September 30, 1977, and the petition in No. 77-605 was filed on October 25, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a public utility that sells its services to various agencies of the federal government is subject to the provisions of Executive Order No. 11246 and implementing regulations.

STATEMENT

A. THE EXECUTIVE ORDER AND IMPLEMENTING REGULATIONS

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 1239 (Pet. No. 77-497 App. 114a), requires that all government contracts include an equal opportunity clause prohibiting the contractor from discriminating in employment on account of race, color, religion, sex or national origin and requiring the contractor to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin."[1]

[1]Section 204 of the Order (Pet. No. 77-497 App. 118a) permits the Secretary of Labor to exempt certain classes of contracts from the operative provisions of the Order. The exemptions adopted by the Secretary (41 C.F.R. 60-1.5) are not applicable here.

Regulations promulgated by the Secretary of Labor (41 C.F.R. 60-1.3, Pet. No. 77-497 App. 132a)[2] define a government contract as "any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease agreements. The term 'services' * * * includes but is not limited to the following services: Utility * * *."

The equal opportunity clause required by the Executive Order obligates the contractor to furnish all information and reports required by the Executive Order and the Secretary's regulations and orders, and to permit the contracting agency to have access to contractor books and records to ascertain compliance with the order and the regulations (Executive Order No. 11246, Section 202(5), Pet. No. 77-497 App. 115a; see 41 C.F.R. 60-1.43, Pet. No. 77-497 App. 142a).

The Secretary's regulations further provide (41 C.F.R. 60-1.4(e), Pet. No. 77-497 App. 141a):

> By operation of the Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

[2]Section 201 of Executive Order No. 11246 (Pet. No. 77-497 App. 114a) directs the Secretary of Labor to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes" of the Order.

B. THE FACTS

1. Petitioner in No. 77-497, New Orleans Public Service, Inc. (hereinafter "NOPSI"), is a public utility that produces, distributes, and sells electric power to consumers located in that part of New Orleans, Louisiana, on the east bank of the Mississippi River, and sells and distributes natural gas to consumers throughout New Orleans (Pet. No. 77-497 App. 65a).

NOPSI sells natural gas and electricity pursuant to permits issued by the City Council of New Orleans, and its activities and prices are regulated by the City Council. Pet. No. 77-497 App. 4a. It is the sole company with permits to supply New Orleans with natural gas and to supply the east bank of the city with electricity (*ibid.*).[3]

Federal agencies and installations in New Orleans are major purchasers of utilities from NOPSI. *Ibid.* In 1973, NOPSI received more than $2,680,000 from the federal government for utility services. Pet. No. 77-497 App. 65a-66a. Nine federal agencies have each paid NOPSI more than $10,000 annually for utility services since 1965. Pet. No. 77-497 App. 66a.[4] Federal agencies, like other consumers, are billed monthly and pay for the services on a regular basis (*ibid.*).

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[3]Consumers located on the east bank of the city have no alternative source of electricity (Pet. No. 77-497 App. 65a). NOPSI also supplies the city with most of its natural gas service, and in the few instances where natural gas is obtained from other sources, NOPSI has agreed to the arrangement and has built and maintained the transmission line connecting the consumer with other facilities at the parish boundary. *Ibid.*

[4]The largest user is the Michoud Assembly Facility of the National Aeronautics and Space Administration, which paid approximately $1.4 million for utility services in 1973. Pet. No. 77-497 App. 66a.

NOPSI supplies the federal government with utility services pursuant to various contractual arrangements.[5] Twenty-two federal agencies are supplied under written agreements (Pet. No. 77-497 App. 21a-33a); six other federal agencies are supplied utilities under arrangements "which are not in the form of formal written agreements signed by both defendant NOPSI and the federal agencies to whom NOPSI supplies utility services" (Pet. No. 77-497 App. 33a-42a). Although some of the written agreements were executed prior to October 24, 1965, the effective date of Executive Order No. 11246, all were modified by revised rate schedules in 1973 (Pet. No. 77-497 App. 21a-33a).[6] Nevertheless, none of the written agreements expressly contains the nondiscrimination clause required by Executive Order No. 11246.[7] In some cases, NOPSI refused to sign a proposed new contract because it contained that clause (Pet. No. 77-497 App. 28a, 31a, 39a-40a).

In 1969, the federal government began efforts to conduct a review of NOPSI's records to investigate its compliance with Executive Order No. 11246 (Pet. No. 77-497 App. 36a). In March 1971, the General Services

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[5]The district court discussed the details of these contractual arrangements (Pet. No. 77-497 App. 21a-42a). The court of appeals, however, held that the "long-standing seller-purchaser relationship indisputedly makes NOPSI a government contractor" and found it unnecessary to inquire into "further contractual underpinning[s]" between NOPSI and the government agencies it services (Pet. No. 77-497 App. 68a, n. 3).

[6]The Executive Order applies to subsequent modifications of contracts entered into before its effective date (41 C.F.R. 60-1.3, Pet. No. 77-497 App. 132a; Executive Order No. 11246, Section 209(a)(6), Pet No. 77-497 App. 122a).

[7]A few of them contain nondiscrimination clauses required by earlier Executive Orders. See, *e.g.*, Pet. No. 77-497 App. 21a, 22a, 23a.

Administration (GSA) notified NOPSI of its conclusion that the equal opportunity clause required by Executive Order No. 11246 was a part of all NOPSI contracts with federal agencies, whether the contracts were written or unwritten (Pet. No. 77-497 App. 42a). In July 1972, the Director of the Office of Federal Contract Compliance of the Department of Labor (OFCC, the office responsible for administering the Executive Order, Pet. No. 77-497 App. 71a) confirmed this conclusion, and informed NOPSI that he had determined, pursuant to the Secretary of Labor's regulations, that NOPSI was a federal contractor subject to Executive Order No. 11246 and the rules and regulations issued pursuant to that Order (Pet. No. 77-497 App. 43a). When NOPSI persisted in its refusal to permit a government inspection of NOPSI's records as part of a compliance review (Pet. No. 77-497 App. 44a), the United States brought suit to compel NOPSI's compliance with the Executive Order (see Section 209(a)(2) of the Order, Pet. No. 77-497 App. 122a).

2. Petitioner in No. 77-605, Mississippi Power & Light Co. (MP&L), is a public utility franchised by the Mississippi Public Service Commission to supply electricity in a large part of the western half of Mississippi, including the cities of Jackson, Clarksdale, Senatobia, Grenada, McComb, Natchez, and Vicksburg (Pet. No. 77-605 App. A60). MP&L is the primary supplier of electricity in that part of the state, and, by virtue of its franchise, it must supply electricity to anyone requesting it, including federal government agencies (*ibid.*). The government has no alternative source of electrical services (Pet. No. 77-605 App. A5).

MP&L has written and unwritten agreements to furnish electrical services costing more than $10,000.00 to federal agencies at 15 government facilities (Pet. No. 77-605 App. A69). While most of the written contracts were executed prior to the effective date of Executive Order No. 11246,[8] they have been amended through rate changes since that date (Pet. No. 77-605 App. A5).[9] None of the written contracts expressly contains the equal opportunity clause required by the Executive Order (*ibid.*).

The government sought access to MP&L's records in 1972 and 1973 in order to conduct compliance reviews (Pet. No. 77-605 App. A6). Although the Director of OFCC informed MP&L by letter that it was a government contractor subject to the provisions of Executive Order No. 11246, MP&L denied the government access to its records on the ground that it had never agreed to comply with the terms of Executive Order No. 11246 or the implementing regulations (Pet. No. 77-605 App. A66-A67). Thereafter, the United States brought suit to compel compliance with the Executive Order and the applicable regulations (see Section 209(a)(2) of the Order, Pet. No. 77-605 App. A86).

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[8]One contract—that for the Greenville Post Office and Court House—was executed after the effective date of the Executive Order. Pet. No. 77-605 App. A68. The contract proposed by the government contained the equal opportunity clause required by the Executive Order, but MP&L returned the contract unsigned (*ibid.*). In lieu of the proposed contract, MP&L substituted its "Agreement for Service" which did not contain the equal opportunity clause or a provision for access to MP&L's records (*ibid.*).

[9]See note 6, *supra*.

C. THE DECISIONS BELOW

In each case the district court declared the utility company to be a government contractor subject to the requirements of Executive Order No. 11246 (Pet. No. 77-497 App. 61a-62a; Pet. No. 77-605 App. A75-A77), and enjoined the company's refusal to comply with the Executive Order and the rules and regulations issued pursuant to it.

The court of appeals affirmed the holdings that the utility companies were government contractors subject to the requirements of the Executive Order (Pet. No. 77-497 App. 96a; Pet. No. 77-605 App. A11). Exercising its equitable discretion, however, in each case the court of appeals set aside the injunctive order of the district court. The court in *NOPSI* explained (Pet. No. 77-497 App. 93a-96a):

> Despite our conclusion that the district court had both the jurisdiction and the power to direct by injunctive order NOPSI's compliance, we conclude that the enforcement function in this case would be better carried out administratively by the compliance agencies.* * *
>
> * * * * *
>
> Though we are removing the injunctive mandate of the district court, our decision contemplates good faith negotiations between the parties, and certain issues decided herein are precluded from further negotiations. The company cannot any longer dispute its coverage under the Executive Order, nor can the company attempt to nullify the effect of the Order's application by demanding limitation-of-scope language in any contract or proposed affirmative action program that would restrict the impact of the Order. Moreover, NOPSI has no valid fourth amendment objections to the Government's demands for access either to the company's facilities or to the company's books and records, nor can NOPSI further delay or resist compliance by insisting on merely technical or unnecessary procedural niceties.

In MP&L, the court explicitly incorporated the *NOPSI* decision and emphasized (Pet. No. 77-605 App. A11-A12):

> Our decision as to the merits of this case has the practical effect of an order, and we see no reason to compel the company's compliance under threat of our contempt power * * *. Our remedial tack today is premised on the assumption that MP&L will now comply fully, promptly and in good faith with Executive Order 11246, in accordance with this opinion and with *NOPSI*. We remind the company that any further delay would be intolerable.

ARGUMENT

1. Programs barring discrimination by government contractors began with an Executive Order issued by President Roosevelt in 1941 and have been regularly reissued in one form or another since that time.[10] Executive Order No. 11246, at issue here, was promulgated in 1965.[11] Every appellate court that has

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[10]These programs are summarized in the *NOPSI* opinion (Pet. No. 77-497 App. 75a-76a), and in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F. 2d 159, 168-171 (C.A. 3), certiorari denied, 404 U.S. 854.

[11]Executive Order No. 11246 was amended in 1967 by Executive Order No. 11375, 32 Fed. Reg. 14303, and superseded in part not relevant here in 1969 by Executive Order No. 11478, 34 Fed. Reg. 12985.

considered the question has concluded that Executive Order No. 11246 and its predecessors represent a valid exercise of Presidential authority. See *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor,* 442 F. 2d 159 (C.A. 3), certiorari denied, 404 U.S. 854; *Farkas* v. *Texas Instrument, Inc.,* 375 F. 2d 629 (C.A. 5); *Farmer* v. *Philadelphia Electric Co.,* 329 F. 2d 3 (C.A. 3); *Local 189, United Papermakers and Paperworkers* v. *United States,* 416 F. 2d 980 (C.A. 5), certiorari denied, 397 U.S. 919; *Southern Illinois Builders Association* v. *Ogilvie,* 471 F. 2d 680 (C.A. 7).

In issuing the Executive Order, the President was exercising his responsibility for the operation of the Executive Branch (cf. *Old Dominion Branch No. 496, National Letter Carriers* v. *Austin,* 418 U.S. 264, 274 n. 5) by defining the terms and conditions under which it would procure goods and services from others (see *Perkins* v. *Lukens Steel,* 310 U.S. 113; *King* v. *Smith,* 392 U.S. 309). Moreover, as Mr. Justice Jackson, concurring in *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579, 635, emphasized, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." There is such congressional authorization here.[12]

The Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, 40 U.S.C. 471 *et seq.,* gives the President express authority over federal

[12]The Presidential authority to establish the terms on which the government will procure services and materials from others and the congressional approval of those terms distinguish this case from *National Association for the Advancement of Colored People* v. *Federal Power Commission,* 425 U.S. 662, on which petitioners rely (Pet. No. 77-497 p. 16; Pet. No. 77-605 pp. 12-16).

procurement practices. 40 U.S.C. 486(a). Such authority includes the power to impose nondiscrimination provisions in federal contracts. *Contractors Association, supra,* 442 F. 2d at 170; *Farkas* v. *Texas Instrument, Inc., supra,* 375 F. 2d at 632, n. 1.[13]

More specifically, Congress has ratified the Executive Order program in Title VII of the Civil Rights Act of 1964 (78 Stat. 253, 42 U.S.C. 2000e *et seq.*) and the 1972 amendments to that Title. 42 U.S.C. (1970 ed.) 2000e-8(d) provided in part:

> Where an employer is required by Executive Order 10925, issued March 6, 1961 [the predecessor of Executive Order No. 11246], or by any other Executive Order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the [Equal

[13]Petitioner MP&L incorrectly suggests (Pet. No. 77-605 pp. 11-17) that the Federal Property Act authorizes only actions designed to reduce the costs caused by inefficient procurement systems. The courts, correctly we submit, have not read the statute so narrowly. In *Contractors Association, supra,* 442 F. 2d at 170, the court concluded that the Act authorized the Executive Order because "it is in the interest of the United States in all procurement to see that its suppliers are not over the long run increasing its costs and delaying its programs by excluding from the labor pool available minority workmen." The courts of appeals in *Rossetti Contracting Co.* v. *Brennan,* 508 F. 2d 1039, 1045 n. 18 (C.A. 7), and *Northeast Construction Co.* v. *Romney,* 485 F. 2d 752, 760 (C.A.D.C.), concluded that the Federal Property Act provides authority for the Executive to try to achieve the social and economic goal of eliminating employment discrimination, without the necessity of directly linking that goal to the cost or quality of the goods procured.

> Employment Opportunity] Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

The 1972 amendments provide instead for Commission consultation and coordination with "other interested State and Federal agencies," and the exchange of information with such agencies (42 U.S.C. (Supp. V) 2000e-8(d)). The amendments thus evidently assume the continued existence and enforcement of the Executive Order equal employment programs.[14] Indeed, Congress rejected an effort to make Title VII the exclusive federal remedy for employment discrimination (see 110 Cong. Rec. 13650-13652 (1964)), and instead left intact alternative remedies to help eliminate discrimination. See *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 47-48; *Sanders* v. *Dobbs Houses, Inc.*, 431 F. 2d 1097, 1100 (C.A. 5), certiorari denied, 401 U.S. 948.[15]

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[14]That assumption is also reflected in the designation of the Secretary of Labor as a member of the Equal Employment Opportunity Coordinating Council established by 42 U.S.C. (Supp. V) 2000e-14 to remedy a perceived inadequacy of coordination between the contract compliance program under the Executive Order and the Equal Employment Opportunity Commission (see 118 Cong. Rec. 1398-1399 (1972)). There is a further recognition of the Executive Order program in 42 U.S.C. (Supp. V) 2000e-17, which requires an administrative hearing before the termination of a government contract under "any equal employment opportunity law or order" if the employer's affirmative action program has been approved by the government within the prior twelve months.

[15]In successfully opposing an amendment that would have eliminated some of the remedies available to victims of employment discrimination, Senator Williams, one of the floor managers of the bill that was ultimately enacted, stated (118 Cong. Rec. 3372 (1972)):

> Furthermore, Mr. President, this amendment can be read to bar enforcement of the Government contract compliance program, at least, in part. I cannot believe that the Senate would do that after all the votes we have taken in the past 2 to 3 years to continue that program in full force and effect.

2. Petitioners are subject to the provisions of the Executive Order because they are parties to government contracts as that term is defined by the regulations issued pursuant to the Order. See 41 C.F.R. 60-1.3, 60-1.4(e) (Pet. No. 77-605 App. A101, A109). Each petitioner supplies several government agencies with utility services having an aggregate total value exceeding $10,000 annually, and therefore does not qualify for the regulatory exemption for small contracts afforded by 41 C.F.R. 60-1.5(a)(2) (Pet. No. 77-605 App. A110). The supply of utility services is specifically listed as a type of government contract covered by the Order. 41 C.F.R. 60-1.3 (Pet. No. 77-605 App. A101). The agreements pursuant to which petitioners supply utility services to government agencies were either entered into or modified after the effective date of the Order, and modification of an existing agreement constitutes a contract subject to the Order. See 41 C.F.R. 60-1.3 (Pet. No. 77-605 App. A101).

Petitioners seek to avoid the requirements of the Order on the grounds that they have no contracts with the government that expressly contain the equal employment opportunity clause of the Order and that they have refused to consent to such a clause.[16] Section 60-1.4(e) of the regulations issued by the Secretary of Labor specifically negates this position by providing that, by

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[16]Petitioner MP&L also contends (Pet. No. 77-605 pp. 19-23) that the United States has no authority to enforce by judicial process the provisions of the Executive Order. This contention is meritless. It is well settled that the United States can enforce its contracts in court without the need for specific authorization by Congress. See, *e.g.*, *Rex Trailer Co.* v. *United States*, 350 U.S. 148; *Cotton* v. *United States*, 11 How. 229, 230. See also *United States* v. *Frazer*, 297 F. Supp. 319 (M.D. Ala.), holding that the United States may sue to enforce federal regulations setting the terms and conditions under which a state may spend federal grant funds.

operation of the Order, the equal opportunity clause is included in every contract required to include the clause, whether the contract is written or unwritten and "whether or not it is physically incorporated in such contracts." 41 C.F.R. 60-1.4(e) (Pet. No. 77-605 App. A109).

Section 60-1.4(e) is a reasonable exercise of the authority delegated to the Secretary of Labor by Section 201 of the Executive Order (Pet. No. 77-605 App. A79), which directs the Secretary to "adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes" of the Order. The regulation does not conflict with any provision of the Order and is reasonably designed to further the Order's purpose of prohibiting discrimination by those with whom the government does business. Accordingly, it has the force and effect of law. Cf. *Mourning* v. *Family Publications Service,* 411 U.S. 356, 369; *Peters* v. *Hobby,* 349 U.S. 331, 345; *Maryland Casualty Co.* v. *United States,* 251 U.S. 342, 349.

Section 60-1.4(e) is essential to the achievement of the purposes of the Order, where the government is doing business with monopolies or near-monopolies such as petitioners here. The government has no realistic alternative other than to do business with these companies, and to pay them millions of dollars annually for services rendered. See pp. 4, 6-7, *supra.* It would be directly at odds with the Order's purpose if, by refusing to consent to the equal opportunity provision, such employers were allowed to benefit from doing business with the government and at the same time to disregard the equal opportunity requirements imposed by the Executive Order as a condition of doing such business.

Section 60-1.4(e) is consistent with previously approved government contracting practices. The government has the right to prescribe the terms and conditions on which it will do business with others, provided such terms and conditions are not arbitrary or unreasonable and they are imposed on all in similar circumstances. *Perkins* v. *Lukens Steel, supra.* Consent to such conditions is not necessary. Congress has often provided by statute that certain obligations in furtherance of social goals be included in government contracts.[17] And, in various situations where applicable regulations require the inclusion of a contract clause in every contract, courts have held the clause to be incorporated and enforceable even if it was not agreed to by the parties. *G. L. Christian and Associates* v. *United States,* 312 F. 2d 418, 424 (Ct. Cl.); *M. Steinthal & Co.* v. *Seamans,* 455 F. 2d 1289, 1304 (C.A. D.C.); *J. W. Bateson Company, Inc.* v. *United States,* 162 Ct. Cl. 566, 569. See also *Russell Motor Car Co.* v. *United States,* 261 U.S. 514, 524; *De Laval Steam Turbine Co.* v. *United States,* 284 U.S. 61; *College Point Boat Corp.* v. *United States,* 267 U.S. 12.

3. The Executive Order and implementing regulations require that government contractors allow the government reasonable access to their records to determine if the contractor is complying with the equal employment opportunity requirements of the Order (see p. 3, *supra*). This requirement, like the agreement not to discriminate, is part of the equal opportunity clause incorporated into every government contract by operation of the Executive Order (Section 202 of the Order, Pet. No. 77-497 App.

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[17]See, *e.g.,* the Walsh-Healey Act, 49 Stat. 2036-2038, as amended, 41 U.S.C. 35, 36, 40; Davis-Bacon Act, 49 Stat. 1011, 40 U.S.C. 276a-1; Buy American Act, 47 Stat. 1520, 41 U.S.C. 10b.

115a; 41 C.F.R. 60-1.4(a) and (e), Pet. No. 77-497 App. 136a, 141a). Petitioners contend (Pet. No. 77-497 pp. 24-33; Pet. No. 77-605 pp. 23-27) that, as applied to them, the access provisions violate the Fourth Amendment's prohibition against unreasonable searches and seizures.[18] This contention is without merit.

Petitioners' reliance on this Court's decisions in *Camara* v. *Municipal Court,* 387 U.S. 523, and *See* v. *City of Seattle,* 387 U.S. 541, is misplaced. Neither of those cases, nor any other authority cited by petitioners, involved situations in which the owner of the records sought to be inspected is a government contractor who is required to permit reasonable inspection of these records during business hours as a condition of doing business with the government, in order to assure his compliance with the provisions of the contract.[19]

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[18]The requirement that government contractors such as petitioners must furnish reports required by the Executive Order and the regulations is not here in dispute. Cf. *California Bankers Assn.* v. *Shultz,* 416 U.S. 21, 57-70.

[19]We have discussed the relationship of *Camara* and *See* to *United States* v. *Biswell,* 406 U.S. 311, upon which the court below relied in upholding the inspection requirement (Pet. No. 77-497 App. 87a), in our brief in *Marshall* v. *Barlow's,* No. 76-1143, filed July 26, 1977. We agree with the court of appeals that the inspection here, like that in *Barlow's,* is closer to the inspections approved in *Biswell* than to those in *Camara* and *See.* But whatever limitations the Fourth Amendment may place on warrantless inspections designed to assure compliance with regulatory programs, the government may require its contractors to submit to inspections it deems necessary to assure compliance with the contract conditions. The principles supporting the incorporation of the substantive agreement into contracts regardless of the contractor's consent equally support the incorporation of the clause permitting inspections.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be denied.

Respectfully submitted.

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